REMARKS

Reconsideration and allowance are respectfully requested in view of the foregoing amendments and the following remarks.

Upon entry of this amendment, claims 33, 34, 36-88 are pending in the application. By this amendment, claim 52 has been amended, and new claims 67-88 have been added.

Claims 33, 34, 36-40, 42, 43, 45-58, 61 and 65 are rejected under 35 U.S.C. § 102(b) over Kenyon (U.S. Patent No. 6,216,691). This rejection is respectfully traversed.

Claim 33 relates to a device for supplying a respiratory gas, in particular a CPAP device, including a delivery device to deliver the respiratory gas at a pressure level that is above ambient pressure, a housing device to receive the delivery device, and an air-conduction structure to conduct the respiratory gas from the delivery device to an outlet region. The air-conduction structure includes a molded foam part made from a foamed material. The molded foam part is subdivided into a first portion of the molded part and a second portion of the molded part, and the first and second portions cooperating to define a conduit wall of an air-carrying conduit in which a portion of the conduit wall is formed by the first portion and a remaining portion of the conduit wall is formed by the second portion.

The Office Action asserts that Kenyon discloses the claimed feature that the air conduction structure is a molded foam part made from a foamed material, referring to col. 2, lines 38-44 and 53-56 as supposedly showing this feature. However, these portions of Kenyon do not disclose an air conduction structure that is a molded part. Instead, these portions of Kenyon merely indicate that the body is formed from a compliant material including a recess of substantially complementary shape to the flow generator, and that the term compliant material

includes material having the ability to absorb vibrations, and being sufficiently structurally rigid to achieve a mounting function and support the weight of the flow generator.

There is no disclosure in Kenyon of an air conduction structure that is a molded foam part, nor has the Office Action pointed to any such disclosure of a molded foam part in Kenyon. Accordingly, because the Office Action has failed to identify this claimed feature, the finality of the Office Action is improper and should be withdrawn, and the rejection of claim 33, and all claims dependent therefrom should be withdrawn.

Claims 34, 36-40, 42, 43, 45-51 and 65 are allowable by virtue of their dependence on claim 33 and additionally allowable for their recitation of additional patentable subject matter.

Claim 52 recites a foam body including a first portion disposed in a first horizontal plane and a second portion disposed in a second horizontal plane, the first portion being vertically offset compared to the second portion, the first portion having a recess for receiving a respiratory gas delivery device, a printed circuit board disposed above the second horizontal plane and between the second portion of the foam body and the top of the housing, the printed circuit board including electrical components, and a coupling shoulder recess formed in the foam body, the coupling shoulder recess receiving a coupling cuff coupled to the respiratory gas delivery device, the coupling cuff disposed between the respiratory gas delivery device and an outlet line. Kenyon does not disclose a foam body including a first portion disposed in a first horizontal plane and a second portion disposed in a second horizontal plane, the first portion being vertically offset compared to the second portion, the first portion having a recess for receiving a respiratory gas delivery device, a printed circuit board disposed above the second horizontal plane and between the second portion of the foam body and the top of the housing, the printed

circuit board including electrical components, and a coupling shoulder recess formed in the foam body, the coupling shoulder recess receiving a coupling cuff coupled to the respiratory gas delivery device, the coupling cuff disposed between the respiratory gas delivery device and an outlet line, as recited in claim 52. Accordingly, the rejection of claim 52 should be withdrawn.

Claims 53-59 and 61 are allowable by virtue of their dependence on claim 52 and additionally allowable for their recitation of additional patentable subject matter.

Claims 41, 64 and 66 are rejected under 35 U.S.C. § 103(a) over Kenyon (U.S. Pat. 6,216,691). Claims 41 and 66 are allowable by virtue of their dependence on claim 33 and additionally allowable for its recitation of additional patentable subject matter, and claim 64 is allowable by virtue of its dependence on claim 52 and additionally allowable for its recitation of additional patentable subject matter.

Claims 44, 59, 60, 62 and 63 are rejected under 35 U.S.C. § 103(a) over Kenyon (U.S. Pat. 6,216,691) in view of McCombs (U.S. Pat. 7,156,903). McCombs is not prior art against the present application. The present application was filed as a PCT application on November 5, 2004 claiming priority to a foreign application filed on November 5, 2003. However, McCombs was filed on September 1, 2004, after the November 5, 2003 effective filing date of the application. While McCombs claims priority to two provisional applications filed on September 2, 2003, 102(e) applies to an application for patent *published* under 122(b), or to a patent granted on an application for patent. Since a provisional is not published and can not be granted, the provisional date cannot be used to establish a 102(e) effective prior art date.

The Office Action relies on McCombs to teach the molded part having different material properties and other function components of the CPAP device. This does not make up for deficiencies noted above with respect to Kenyon.

Further, there would not have been motivation to combine the references as suggested in the Office Action. In particular, the Office Action asserts that it would have been obvious to use the first and second portions of the molded parts having different material properties of McCombs in the device of Kenyon. However, in McCombs the outer walls of the overall device are made of a plastic sound absorbing foam material, with the bottom portion 48 having a higher density. In contrast, the mounting body 10 of Kenyon is mounted within an external housing. See col. 2, lines 38-44. Accordingly, the plastic sound absorbing material forming the external outer walls of the device of McCombs would be inapplicable to the device of Kenyon. As such, one of ordinary skill in the art would not have combined the references as suggested in the Office Action.

Further, Kenyon and McCombs are from non-analogous arts. In particular, while Kenyon discloses a mounting body for a flow generator for supplying a continuous supply of breathable gas to a patient in a CPAP type of device, McCombs discloses a combined pressure swing adsorption apparatus and an oxygen conserving device (PSA/OCD), used for fractioning nitrogen from ambient air by pressure swing adsorption to produce concentrated oxygen in pulse doses at specific intervals and on demand by the user. McCombs does not supply a continuous supply of breathable oxygen to a patient as in the Kenyon device, but instead supplies concentrated oxygen doses at intervals or upon demand by the user, i.e., during inspiration only.

Even if the devices of Kenyon and McCombs were from non-analogous arts, one of ordinary skill would not have looked to the device of McCombs when considering the device of Kenyon.

McCombs uses an oxygen concentrator that is enclosed by a foam sound enclosure, the enclosure allowing air to enter the interior of the enclosure without affecting the flow rate, and without reducing the flow rate of waste gases exiting from the concentrator. McCombs prevents the waste gases from mixing with the incoming air and redirects the waste gases before exiting the enclosure. See col. 1, lines 50-64.

In contrast, the flow generator of Kenyon is mounted in a compliant material within an external housing, with the compliant material adapted to be fixed within the housing, and to recesses to receive the flow generator assembly. See col. 2, lines 38-44. The object of the foam sound enclosure of McCombs, to allow air to enter the interior of the enclosure without affecting the flow rate, and without reducing the flow rate of waste gases exiting from the concentrator, is inapplicable to the flow generator of Kenyon, which does not include a foam outer body (as in McCombs), and does not generate waste gases that need to be evacuated through the foam.

Claim 44 is allowable by virtue of its dependence on claim 33 and additionally allowable for the reasons given above, and claims 59, 60, 62, and 63 are allowable by virtue of their dependence on claim 52 and additionally allowable for their recitation of additional patentable subject matter.

New claims 67-88 have been added. Entry and allowance of these new claims are respectfully requested.

In view of the above amendments and remarks, Applicants respectfully submit that all claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the below listed telephone number.

Respectfully submitted,

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